

Before the  
Federal Communications Commission  
Washington, DC 20554

Stamp and Return

*Walker*

*95-116*

In the Matter of

Puerto Rico Telephone Co.  
Petition for Declaratory Ruling Regarding  
Implementation of Local Number  
Portability and Number Pooling

RECEIVED

NOV 26 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**PUERTO RICO TELEPHONE COMPANY  
PETITION FOR DECLARATORY RULING**

José E. Arroyo Dávila  
Sandia E. Torres López  
Walter Arroyo Cariasquillo  
Puerto Rico Telephone Company  
1515 Roosevelt Avenue, 12<sup>th</sup> Floor  
Caparra Heights, PR 00921  
(787) 793-8441

Suzanne Yelen  
Joshua S. Turner  
Sarah A. Dylag  
Wiley Rein & Fielding LLP  
1776 K Street, N.W.  
Washington, DC 20006-2304  
(202) 719-7000

Its Attorneys

November 26, 2003

## Table of Contents

I	BACKGROUND .....	2
II	REVERSE TOLL BILLING IS TECHNICALLY INCOMPATIBLE WITH FEDERAL LNP AND POOLING REQUIREMENTS. ....	6
III	COMPLIANCE WITH THE BOARD'S ORDER RESULTS IN DISCRIMINATION THAT CONFLICTS WITH FEDERAL LAW.. ....	9
IV	THE ORDER IS PREEMPTED BY FEDERAL LAW .....	11
V	CONCLUSION ....	12

## Summary

Puerto Rico Telephone Company, Inc. ("PRT") submits this Petition for Declaratory Ruling seeking a determination that an Order issued by the Telecommunications Regulatory Board of Puerto Rico ("TRB" or "Board") is preempted by federal administrative and statutory law. The TRB has required that PRT keep in place a system known as "reverse toll billing" or "wide area calling," which allows wireless providers to adopt alternative arrangements in order to avoid having wireline customers pay toll charges when calling certain wireless numbers.

Reverse toll billing relies on using NPA-NXX codes to determine which carrier serves a particular number. Because the implementation of pooling and porting results in NPA-NXX codes being split among multiple carriers, it is impossible for PRT to comply fully with the Board's order and provide reverse toll billing on all wireless numbers. This is the same result reached by carriers across the United States.

If PRT complies to the extent possible with the Board's Order and retains reverse toll billing on those NPA-NXXs that were originally assigned to wireless carriers, those customers who port wireline numbers to wireless carriers (and those wireless customers who receive a number in a formerly wireline NPA-NXX because of pooling) will not receive reverse toll billing, and callers to these numbers may be assessed toll charges. Similarly, a customer who ports a wireless number to a wireline phone (and those customers who receive a number in a formerly wireless NPA-NXX because of pooling) will, as a side effect, receive reverse toll billing *on their wireline phone*.

PRT respectfully believes that the Board's Order is inconsistent with federal porting and pooling requirements and will result in unreasonable discrimination. Therefore, it is preempted both by the Commission's pooling and porting rules and by Section 202 of the Communications Act.

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of

Puerto Rico Telephone Co.  
Petition for Declaratory Ruling Regarding  
Implementation of Local Number  
Portability and Number Pooling

**PETITION FOR DECLARATORY RULING**

Puerto Rico Telephone Company ("PRT") hereby respectfully requests that the Federal Communications Commission ("Commission") issue a declaratory ruling<sup>1</sup> finding that an order issued by the Telecommunications Regulatory Board of Puerto Rico ("TRB" or "Board") on November 20, 2003,<sup>2</sup> which requires PRT to maintain reverse toll billing after implementation of local number portability ("LNP"), is inconsistent with the Commission's LNP and thousand-number pooling requirements and with Section 202 of the Communications Act.<sup>3</sup> With the implementation of LNP and pooling, PRT can no longer determine based on the NPA-NXX which telephone numbers are associated with wireless carriers and which with wireline carriers. This effectively precludes the offering of reverse toll billing arrangements for all wireless numbers. For this reason, other local exchange carriers have discontinued their reverse toll billing offerings.

PRT will comply with the Board's Order by continuing reverse toll billing arrangements with respect to all numbers in NPA-NXXs previously assigned to wireless carriers but not with

---

<sup>1</sup> 47 C.F.R. § 1.2

<sup>2</sup> Telecommunications Regulatory Board of Puerto Rico, Resolution and Order, Case No. JRT-2003-CCG-0006 (Nov. 20, 2003) ("Order"). An English translation of the Order is attached as Exhibit 1.

<sup>3</sup> 47 U.S.C. § 202(a).

respect to numbers previously assigned to wireline carriers that are ported or pooled to wireless carriers. However, PRT respectfully believes that maintaining reverse toll billing defeats the goals of porting and pooling, including fostering intermodal competition and ensuring number conservation, and causes unreasonable discrimination in violation of Section 202 of the Communications Act of 1934, as amended.<sup>4</sup> Therefore, PRT requests that the Commission issue a declaratory ruling finding that the Board's Order is inconsistent with federal law and is preempted.

## **I. BACKGROUND**

PRT emphasizes that it has implemented intermodal LNP and pooling in compliance with the Commission's deadlines, and all calls to and from ported and pooled numbers are being routed appropriately and without delay.<sup>5</sup> The deadline for covered Commercial Mobile Radio Service ("CMRS") carriers to implement LNP in the top 100 Metropolitan Statistical Areas ("MSAs") (including San Juan, Puerto Rico) was November 24, 2003.<sup>6</sup> As of that date, wireline carriers in these areas were required to port numbers for requesting customers to wireless carriers,<sup>7</sup> and wireless carriers were required to port numbers for requesting customers to either wireless or wireline carriers. In addition, pursuant to the schedule established by the North American Numbering Plan Administrator ("NANPA"), thousand-block number pooling was implemented for wireline carriers in Puerto Rico in June of 2003.

---

<sup>4</sup> 47 U.S.C. § 202(a)

<sup>5</sup> While these calls are being routed without delay, the retention of reverse toll billing in compliance with the Board's Order means that customers calling certain numbers ported or pooled to wireless service will incur toll charges, while calls to numbers in the NPA-NXXs previously dedicated to wireless service will not incur such charges.

<sup>6</sup> As required by the Commission's rules, PRT will be ready to provide intermodal LNP in those areas of Puerto Rico outside of the San Juan MSA on May 24, 2004.

<sup>7</sup> The CMRS LNP deadline does not affect the porting obligations of LECs with respect to other LECs. PRT is fully compliant with the FCC's rules for wireline LNP. 47 C.F.R. § 52.23

For some time, PRT has followed the general industry practice and offered CMRS carriers with which it interconnects the option of "reverse toll billing," also known as "wide area calling." Reverse toll billing was originally devised as an option for wireless carriers to promote the growth of CMRS service. Under a reverse toll arrangement, in lieu of assessing toll charges on the originating end user, a LEC agrees to route traffic directly to the CMRS carrier.<sup>8</sup> Thus, when a wireline customer calls a wireless customer whose telephone number is assigned to a different local calling zone, the wireline customer is not assessed the toll that would otherwise apply. If the CMRS carrier did not choose to use reverse toll billing, the wireline customer would be assessed toll charges.

Reverse toll billing was possible because PRT could identify calls to wireless carriers by the first six digits of the telephone number (the "NPA-NXX"). As PRT studied the implementation of pooling and intermodal LNP, it reached the same conclusion as carriers throughout the United States. That is, because both pooling and intermodal LNP make it impossible to know which carrier or service a given NPA-NXX is assigned to, a comprehensive reverse toll billing arrangement cannot be maintained after the implementation of pooling and intermodal porting. In 2003, as the deadline for intermodal porting drew near and as pooling was implemented,<sup>9</sup> PRT reached the same conclusion as carriers throughout the United States and prepared for the elimination of reverse toll billing.

Concerned about the potential impact that the elimination of reverse toll billing would have, the TRB held a hearing on October 9, 2003. At that hearing and in filings before the Board,

---

<sup>8</sup> Similar to offerings of other LECs, PRT gave CMRS carriers a choice between compensating PRT directly for the foregone toll charges or establishing facilities within each local calling zone in order to pick up the traffic in the same zone in which it originates.

<sup>9</sup> Although pooling began in Puerto Rico in June 2003, the first pooled numbers were not activated by any carrier until November 2003.

and as detailed below. PRT explained that maintaining the current reverse toll billing system is technically incompatible with the implementation of intermodal LNP and pooling. PRT worked to ensure that the Board, wireless carriers, interexchange carriers, and Puerto Rico consumers understood the reasons why full implementation of intermodal LNP and pooling is incompatible with reverse toll billing.

No party to the proceeding presented evidence contradicting PRT's technical conclusions. Indeed, no other party presented any evidence at all. Furthermore, no party was able to articulate how reverse toll billing could be maintained once pooling and porting were implemented. Nonetheless, on November 20, 2003, the Board issued an order rejecting PRT's technical explanations and requiring PRT to continue reverse toll billing.<sup>10</sup> In this Order, the Board misguidedly relied on a number of incorrect factual determinations and assumptions, and reached conclusions that appear to conflict with federal LNP, pooling, and non-discrimination requirements. Stating, mistakenly, that its Order does not affect the implementation of LNP in Puerto Rico, the Board asserted that eliminating reverse toll billing would have a negative impact on the telephone network, violate interconnection agreements, damage companies' investments, and harm the public interest.<sup>11</sup>

It is technically impossible to offer reverse toll billing to all wireless customers after the implementation of pooling and porting. PRT can continue providing reverse toll billing, but it can do so only for native wireless numbers.<sup>12</sup> Moreover, if PRT provides reverse toll billing for any native wireless numbers in a given NPA-NXX, it must do so for all numbers in that NPA-NXX.

---

<sup>10</sup> See Order at 9.

<sup>11</sup> Order at 3-7.

<sup>12</sup> For the purposes of this Petition, a "native wireless" number is any number in an NPA-NXX that was originally assigned to a wireless carrier, regardless of which carrier currently utilizes the number. A "native wireline" number is any number in an NPA-NXX that was originally assigned to a wireline carrier.

As a result, if PRT maintains reverse toll billing for wireless customers, it will, as a side effect, also be forced to provide reverse toll billing for any wireline customer who either ports a wireless number to a wireline phone, or who receives a native wireless phone number for their wireline phone as a result of pooling. Further, PRT *cannot* offer reverse toll billing for native wireline numbers ported to a wireless carrier. PRT also cannot provide reverse toll billing where a wireless carrier receives a native wireline number through pooling.

For PRT to provide reverse toll billing on all calls to wireless carriers, including pooled and ported numbers, PRT would have to run a query on every call made from its customers. However, once PRT queries a call, it *cannot be passed to a long-distance carrier*. The national standard for LNP requires that tasks related to routing be conducted serially.<sup>13</sup> The switch first determines if the number is local. If the number is not local, the switch hands the call off to the customer's pre-subscribed long-distance carrier. Only if the number is local does the switch proceed to determine whether a database query is required.<sup>14</sup> The LNP protocol does not allow for a carrier to conduct a database query prior to handing a call off to a long distance carrier. Once the query is run, there is no process for going back and transferring the call to a long-distance carrier.<sup>15</sup> In order to run queries on all calls, PRT would have to put itself in the position of being

---

<sup>13</sup> North American Numbering Council, Local Number Portability Administration Selection Working Group Report, App. D (Architecture & Administrative Plan for Local Number Portability) (Apr. 25, 1997).

<sup>14</sup> For those calls where PRT is the pre-subscribed long-distance carrier, PRT is the N-1 carrier and performs the query.

<sup>15</sup> Redesigning PRT's switches to use a different logical protocol is not a feasible alternative. First, such a step would put PRT at odds with the national LNP standard and would thus jeopardize PRT's ability to comply with future revisions to the standard. Second, even if PRT could run the risk of going against the accepted protocol, a redesign would require PRT to have custom software written for each one of its different switch types. Even if it were possible to find a vendor (or vendors) willing to perform this task, the redesigns would be prohibitively expensive.



the N-1 carrier<sup>16</sup> for all intra-island calls. In other words, PRT would have to stop handing any traffic to intra-island long-distance carriers, and would have to transport and route itself all intra-island calls made by its customers, bypassing the customers' pre-subscribed intra-island carrier.

The Board's Order requiring retention of reverse toll billing raises serious concerns under federal LNP and pooling requirements, as well as questions regarding compliance with Section 202 of the Communications Act.

## **II. REVERSE TOLL BILLING IS TECHNICALLY INCOMPATIBLE WITH FEDERAL LNP AND POOLING REQUIREMENTS.**

As PRT explained to the Board, reverse toll billing is technically incompatible with intermodal LNP and pooling. Therefore, it is not possible to maintain reverse toll billing while also complying with federal LNP and pooling requirements.

As explained above, intermodal LNP and pooling prevent wireline carriers from knowing which calls are directed to wireless carriers by the NPA-NXX code, which is essential for reverse toll billing. Prior to the implementation of federal LNP and pooling requirements, PRT could rely on the fact that a given NPA-NXX code belonged to a certain carrier, and that only customers of that carrier would be assigned to that code. As a result, for calls inbound to native wireless NPA-NXX codes, PRT could offer CMRS carriers the option of allowing wireline end users to avoid the toll charges that would normally be assessed on calls to wireless phones with numbers assigned to another local calling area. This "reverse" toll billing meant that the wireless carrier either (1) compensated PRT for not charging the end user toll charges when a wireline customer called toll numbers assigned to the wireless carrier, or (2) established meet-point facilities within each local calling zone to pick up the traffic. With either arrangement, the call did not result in any toll charges to the wireline end user making the call.

---

<sup>16</sup> The "N-1 carrier" is the entity that handles a telephone call immediately prior to handing the call off to the terminating carrier.

Both pooling and porting have rendered the assumptions underlying reverse toll billing untenable for the reasons noted below. As a result of number pooling and intermodal number porting, carriers increasingly will have customers assigned to NPA-NXX codes that traditionally belonged to other carriers or services. There will be no way, based on an NPA-NXX code, for a carrier such as PRT to know to which carrier (or what type of carrier) a call is bound. Therefore, all non-local calls from wireline consumers will have to be passed to the customer's pre-subscribed intra-island carrier. That carrier, whether it is PRT or another intra-island carrier, will query the call and route it appropriately.<sup>17</sup> Once the call is handed off to the intra-island carrier, that carrier's intra-island toll charges will apply.<sup>18</sup>

Not addressing this issue, the Board's Order directs PRT to maintain reverse toll billing even after the implementation of intermodal LNP and pooling. With pooling and porting in effect, however, this is impossible, because PRT will have no way of knowing based on the NPA-NXX whether a given call is going to a wireless carrier. As explained above, in order to route the calls on behalf of the CMRS carrier or to route this traffic over the CMRS carrier's meet points, PRT would have to run a query on every call made from its customers and, because of the LNP protocols, route every call itself. This would make PRT the only toll provider in Puerto Rico, bypassing the customer's chosen pre-subscribed intra-island carrier.

---

<sup>17</sup> Contrary to the Board's assertion in its Order, the elimination of reverse toll billing is not a way for PRT to avoid its obligations when it is the N-1 carrier. See Order at 5. In the case of a local call between PRT and a CLEC, where there are a total of two carriers, PRT would be the N-1 carrier. In the case of a long distance call, where there may be three carriers, the long distance carrier would be the N-1 carrier. Under the national LNP standard, it is the N-1 carrier that is responsible for conducting the LNP query. *Telephone Number Portability*, Second Report and Order, 12 FCC Rcd 12281, 12323 (1997). PRT performs the queries where it is the N-1 carrier today and will continue to do so. However, with the implementation of pooling and porting, it is impossible for PRT to know which calls it must query based on the NPA-NXX. If reverse toll billing is maintained, a certain number of wireline-to-wireline long-distance calls (those where the receiving party has a native wireless number) will not be routed to the long-distance carrier, and PRT will incorrectly be forced to assume the role of N-1 carrier.

<sup>18</sup> Because the wireline consumer will be assessed toll charges, CMRS providers will no longer pay the wireline provider the reverse toll billing charges for these calls.

Despite its best efforts, PRT's engineers have not been able to identify a solution to the technical problems identified above. PRT is not alone, as this situation is the same throughout the United States. Wireline carriers in markets across the United States have been phasing out reverse toll billing over the last year in anticipation of intermodal LNP. Sprint stated that it "aggressively sought a solution," and that "[a]ll solutions were investigated," but that "no solution was identified" that would allow the retention of reverse toll billing.<sup>19</sup> Last year, the press reported that many SBC customers "experienced the change [of elimination of reverse toll billing] several years ago," and that "all nine states where BellSouth Corp. is the local provider got rid of the old billing system by Oct. 1, [2002]."<sup>20</sup> Many state commissions have treated this change on a ministerial basis with minimal proceedings.<sup>21</sup> Indeed, PRT's research has found no state where the regulatory authority prevented the elimination of reverse toll billing.

---

<sup>19</sup> Sprint Letter to Wireless Customers (July 2003) ([http://www.sprintbmo.com/bizpark/localwholesale/html/c\\_notifications.html](http://www.sprintbmo.com/bizpark/localwholesale/html/c_notifications.html))

<sup>20</sup> See Brian Bergstein, *Calling Cell Phones Could Carry Fees*, Topeka Capital-Journal, Oct. 26, 2002, at [http://cjonline.com/stories/102702/pro\\_cellphones.shtml](http://cjonline.com/stories/102702/pro_cellphones.shtml). BellSouth has apparently experimented with a system that seeks to maintain the functionality of reverse toll billing in a pooling and porting environment. However, BellSouth's experimental solution only works for those customers that are pre-subscribed to BellSouth long-distance service. Currently, about 50 percent of PRT's local exchange customers use a carrier other than PRT for intra-island long-distance. Further, the BellSouth system does not contain a mechanism to warn the consumer when toll charges are being assessed, and the customer thus does not realize that he or she is incurring toll charges until receiving a phone bill.

<sup>21</sup> See, e.g., New Mexico Public Regulation Commission, Consumer Relations Division Release, Wide Area Calling (Reverse Billing) changes. How They Affect Wireline (Landline) to Wireless Calling in New Mexico (<http://www.nmprc.state.nm.us/consumers/pdf/consumrwcnewsrelease.pdf>) (stating that "[r]everse billing arrangements between wireline and wireless carriers are being terminated due to changes in the industry" and that "[t]he cancellation of these arrangements between landline and wireless carriers is happening nationwide"); see also Information for Verizon Local Service Customers who Make Calls to Cell Phones, New Hampshire Public Utilities Commission, at <http://www.puc.state.nh.us/tcwebpage/CellPhoneExchanges.xls> (noting that reverse toll billing in New Hampshire had been fully eliminated in early September 2003).

### III. COMPLIANCE WITH THE BOARD'S ORDER RESULTS IN DISCRIMINATION THAT CONFLICTS WITH FEDERAL LAW.

If required to comply with the Board's Order, the best that PRT can technically accomplish is to offer reverse toll billing on native wireless numbers. However, as explained above, PRT must offer this service on all native wireless numbers within a given NPA-NXX. Therefore, even those wireless numbers that are ported or pooled to wireline carriers will be subject to reverse toll billing, although PRT will be unable to recover the reverse toll charges from the terminating carrier. In addition, PRT cannot offer reverse toll billing on native wireline numbers, *even if a customer ports his or her wireline number to a wireless carrier*, or where a wireless carrier receives a native wireline number through pooling.

Retaining reverse toll billing under these technical constraints is inconsistent with Commission precedent and federal law. This practice will discriminate against wireless customers that receive native wireline numbers on their wireless phones either through pooling or porting, by imposing higher costs on wireline end users calling wireless customers with ported or pooled numbers versus those calling wireless customers with non-porting or non-pooled numbers. This will serve as a powerful incentive for a customer not to port his or her existing number and to reject pooled numbers. Such a result seems to contradict the LNP rules issued by the Commission, which seek to reduce barriers to switching carriers, and to undermine the objective of ensuring sufficient numbering resources through number pooling. Moreover, a policy that discriminates against customers in this way raises profound concerns under the Communications Act, which forbids unreasonable discrimination in the provision of service by a common carrier.<sup>22</sup>

---

<sup>22</sup> 47 U.S.C. § 202(a) ("It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.")

In essence, complying with the Board's Order requires PRT to provide wireline customers who obtain a number in a native wireless NPA-NXX with a billing arrangement for incoming calls that is fundamentally different from (and superior to) the arrangement that customers with any other number would receive, because callers could make toll calls to these numbers without paying toll charges. The discrimination problem is even more profound with respect to wireline customers, because any customer that ported from a wireline carrier to a wireless carrier would retain the "wireline" prefix. As a result, *all* customers who ported from PRT's wireline service to any wireless service would not receive the benefit of the billing arrangement available to those wireless customers that received a number in a native wireless NPA-NXX. This would present a strong disincentive to port.

In considering methods of implementing LNP, the Commission found that a plan that "treat[ed] ported numbers differently than non-porting numbers" specifically contradicted its LNP mandate.<sup>23</sup> In the Number Portability Order, the Commission recognized that Congress imposed these requirements "in order to promote the pro-competitive, deregulatory markets it envisioned" in the 1996 Act.<sup>24</sup> The Commission thus specifically rejected "methods which first route the call through the original service provider's network in order to determine whether the call is to a ported number, and then perform a query only if the call is to be ported."<sup>25</sup> The Commission determined that this would treat ported numbers differently than non-porting numbers, disadvantaging "the carrier to whom the call was ported and impair[ing] that carrier's ability to compete effectively against the original service provider."<sup>26</sup> Under the Board's Order, the

---

<sup>23</sup> Telephone Number Portability, *First Report and Order*, 11 FCC Rcd 8352, 8380 (1996).

<sup>24</sup> *Id.* at 8354.

<sup>25</sup> *Id.* at 8380.

<sup>26</sup> *Id.*

differing treatment between ported numbers and non-ported numbers appears to be even more discriminatory and to contradict federal LNP requirements.

#### **IV. THE ORDER IS PREEMPTED BY FEDERAL LAW**

Because the Board's Order is inconsistent with the Commission's LNP and pooling requirements and causes unreasonable discrimination, it is preempted by federal law. Federal law preempts state law in three cases. "(1) express preemption, where Congress explicitly defines the extent to which its enactments preempt state law; (2) field preemption, where state law attempts to regulate conduct in a field that Congress intended the federal law exclusively to occupy; and (3) conflict preemption, where it is impossible to comply with both state and federal requirements, or where state law stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress."<sup>27</sup>

In this case, conflict preemption applies. Not only does maintaining reverse toll billing present a barrier to the implementation of the intermodal LNP and pooling consistent with federal requirements, but it also puts PRT in the position of potentially violating Section 202 of the Communications Act. The Commission should find that the Board's directive to maintain reverse toll billing constitutes an obstacle to the accomplishment and execution of the full purpose and

---

<sup>27</sup> *Industrial Truck Ass'n Inc. v. Henry*, 125 F.3d 1305 (9th Cir. 1997) (citing *English v. General Elec. Co.*, 496 U.S. 72, 78-80 (1990)); *Southern Pac. Transp. Co. v. Public Util. Comm'n*, 9 F.3d 807 (9th Cir. 1993), see also *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372 (2000) (citations omitted) (explaining that "[a] fundamental principle of the Constitution is that Congress has the power to preempt state law. Even without an express provision for preemption, we have found that state law must yield to a congressional Act in at least two circumstances. When Congress intends federal law to 'occupy the field,' state law in that area is preempted. And even if Congress has not occupied the field, state law is naturally preempted to the extent of any conflict with a federal statute. We will find preemption where it is impossible for a private party to comply with both state and federal law and where 'under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'")

objectives of the Communications Act, and is preempted both by the Commission's rules regarding LNP and pooling as well as by the Communications Act itself<sup>28</sup>

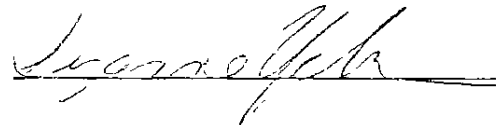
## V. CONCLUSION

For the foregoing reasons, PRT respectfully requests that the Commission issue a declaratory ruling finding the Board's Order to the extent it requires the maintenance of reverse toll billing is preempted under federal law because it is inconsistent with federal LNP and pooling requirements and with the Communications Act.

Respectfully submitted,

PUERTO RICO TELEPHONE COMPANY

By:



José E. Arroyo Dávila  
Sandra E. Torres López  
Walter Arroyo Carrasquillo  
Puerto Rico Telephone Company  
1515 Roosevelt Avenue, 12<sup>th</sup> Floor  
Caparra Heights, PR 00921  
(787) 793-8441

Suzanne Yelen  
Joshua S. Turner  
Sarah A. Dylag  
Wiley Rein & Fielding LLP  
1776 K Street, N.W.  
Washington, DC 20006-2304  
(202) 719-7000

Its Attorneys

November 26, 2003

---

<sup>28</sup> Notably, complying with the Board's Order also arguably requires PRT to violate the FCC's rules against "slamming." To comply with the Board's Order, PRT must route toll traffic away from the IXC for wireline-to-wireline calls. Doing so may be perceived as a violation of the Commission's "slamming" rules, because it could be interpreted as forcing PRT effectively to change a subscriber's long-distance service provider without obtaining authorization. 47 C.F.R. § 64.1110, *et seq*

## **Exhibit 1**



COMMONWEALTH OF PUERTO RICO  
REGULATORY BOARD OF TELECOMMUNICATIONS  
OF PUERTO RICO

PUERTO RICO TELEPHONE  
COMPANY, INC.

CASE NO.: JRT-2003-CCG-0006

RESOLUTION AND ORDER

**BACKGROUND:**

In a Resolution and Order entered and notified in September 26 and October 1, 2003, respectively, this Board summoned Puerto Rico Telephone Company, Inc. ("PRTC") to an investigative hearing related to the implementation in Puerto Rico in November 24, 2003, of the local number portability service, in its intermodal modality, as required by the Federal Communications Commission ("FCC").

Said Order is the result of a communication sent to this Board in September 19, 2003, as well as of the information provided to the media, in which PRTC communicates that it will perform modifications to the commercial agreements with the companies providing wireless service. Said modifications refer to the manner in which PRTC will bill its clients for the calls originated from wireline telephones to wireless, anticipating these will be valued and billed to the client as intransland long distance calls, should the call end in a NXX outside the local zone from which it originates. Under the prevailing scheme, consumers do not pay long distance charges

for these calls, because PRTC negotiated with the wireless companies providing the telecommunications service in Puerto Rico, certain clauses regarding the routing and billing of these.

Last October 9 the investigative hearing in question was held. Attendees included the three members of this Board, Attorney Phoebe Forsythe Isales, President, and the Associate Members, Attorney Vicente Aguirre and Attorney Jorge Bauermeister, acting as Examining Officer, Attorney Encarnita Catalán Marchán. During the hearing the testimony of the PRTC was received, through its witness, Eng. Roberto Correa, Vice president of Operations. Likewise, Centennial de Puerto Rico ("Centennial") participated through its legal representation, Attorney Christopher Savage, to the effect of presenting its arguments regarding the controversy herein. On this occasion, the Board invited the companies so wishing to do it, to present their comments on the subject under consideration.<sup>1</sup>

**CONTROVERSY:**

The main subject before our consideration is PRTC's

---

The following companies submitted comments: Cingular Wireless; Sprint; Telefónica Larga Distancia and AT&T Wireless. Additionally, the record includes, *Response by PRTC; Comments and Claim by Centennial and Reply Comments by PRTC.*

allegation that the implementation of the local number portability service in its intermodal modality ("LNP"), requires routing the calls in a manner different to that being used so far, thus alleging that the current billing form for these calls, identified as reverse toll billing (hereinafter "RTB") is incompatible with the implementation of the LNP, so the Company will be forced to eliminate it. PRTC also alleges, that the changes to be made in the network to implement the number pooling, same as the LNP, require the elimination of the RTB. It indicated that implementing the LNP will prevent the wireline service carriers from determining which calls are directed to a wireless service carrier.

Should the modification proposed by PRTC be adopted, the clients of PRTC calling from a wireline telephone to a cellular associated to a different local network, will have to, in addition to paying for the call as a long distance, to dial in a different manner, that is, using prefix 1. As a result, PRTC indicated it is conducting an educational campaign, to start in 30 days, prior to said implementation, at a cost of approximately \$400,000.

Likewise, it is PRTC' position that in other states in which its matrix company, Verizon, offers local service, the RTB has been eliminated from the respective rates to remove

said option.<sup>2</sup>

On the other hand, the companies, with the exception of Sprint, oppose PRTC's proposal. Centennial, alleged that PRTC's actions will have the effect of degrading severely the value of the wireless services rendered in Puerto Rico. Similarly, it argues that routing the calls in the way PRTC proposes, handing over the traffic to the long distance carriers ("IXC"), will cause a congestion in its network, entailing the degradation of the telecommunications services in Puerto Rico, overloading the facilities and causing unnecessary delays in the processing of calls.

Centennial sustains that PRTC's proposal concerning the elimination of the RTB, is not a direct result of the need to implement LNP, because there is a mechanism of verification through the local routing number ("LRN"). It alleges that in this controversy what is intended is to reclassify minutes of traffic that are now local for consumers, to intraisland long distance traffic. Centennial emphasizes the fact that there are interconnection agreements between the wireless companies and PRTC, in which, in addition to the billing system, agreements have been reached for the routing system, making these local calls

---

<sup>2</sup> Affidavit of Michael O'Connor, Response, of October 9, 2003.

Finally, Centennial sustains that PRTC's proposal is a strategy with the purpose of increasing significantly its revenues, because if reclassified to intraisland long distance traffic, the calls in question would entail the payment of access charges for said traffic, in addition to generating income for PRTC for the long distance service it also renders.

Cingular raises that the elimination of the RTB is not justified. It arguments that PRTC has not received a "Bonafide Request" and that PRTC has not effectively explained the technical problems it alleges to be confronting TLD and AT&T oppose it, equally, with similar arguments. AT&T adds that a term of not less than six months for companies and clients should be provided, from the date in which the elimination of the RTB is decided to perform the pertinent changes and notifications to their clients. Sprint, on the other hand, sustains that it will be available to start the service in the date provided and any action contrary to PRTC, will be a violation of the federal provisions applicable.

In its Reply, PRTC opposes the arguments of the companies and sustains its position that technical considerations require the elimination of the RTB, arguing its obligation to offer intermodal LNP in November 24, 2003, supported by the

intention of Sprint to start carrying numbers on said date.

**DISCUSSION:**

Having examined the positions of the parties, and after a careful analysis of the controversy, this Board concludes the implementation of the LNP under the scheme proposed by PRTC is inappropriate, that is, taking as consideration the elimination of the RTB.

It is necessary to clarify that, contrary to what PRTC intends to do, the decision we are making herein does not prevent nor affects the implementation of the LNP in Puerto Rico as set forth by the Federal Communications Commission ("FCC" by its acronym in English). PRTC has adopted the position that the **sole** manner of offering intermodal LNP in Puerto Rico is through the elimination of the RTB. However, it is clear that the FCC never included in its decisions regarding this matter the way in which the ILECs, such as PRTC, would implement the service, leaving this type of decision to the supervision of the states<sup>3</sup>. The elimination

---

<sup>3</sup> Since the end of 2000, this Board initiated, jointly with other companies, a process to develop, effectively and orderly, the LNP in Puerto Rico, pursuant to the federal regulations. Since the beginning, PRTC participated actively and interestingly never brought up the matter of the need to eliminate RTB as an indispensable requirement to implement the LNP.

of the RTB is not imperative for the implementation of the LNP.<sup>4</sup>

We reiterate that, different from the allegation by PRTC, the obligation to implement LNP established by the FCC, does not obligate PRTC to eliminate the RTB. The option proposed by PRTC to implement LNP is not the appropriate vehicle for the market of Puerto Rico, resulting, additionally, inconsistent with its contractual obligation. We explain ourselves.

**1. Impact on the network:**

It is a concern the impact on the network that PRTC's proposal may have, affecting the current capacity and facilities of the companies offering the long distance service ("IXCs") and lastly, the services of telecommunication rendered in Puerto Rico. PRTC's intention of changing substantially the way of delivering the traffic to the IXC, that will in turn finish it to the wireless company ("CMRS"), would affect the service to consumers, since the IXCs and the CMRS are not prepared to receive and finish this traffic. We understand there are no direct connections between the IXCs and the CMRS, that should be constructed, requiring later that they pass the technical

---

<sup>4</sup>

tests necessary for their use.

Additionally, we understand that it is neither reasonable nor sufficient for the companies to implement such a drastic change, in such a short term as PRTC intends to impose (approximately only two months). The Board understands the implementation proposed by PRTC will have a negative effect on the telephone network. Our action is necessary to prevent a degradation of the network.

## **2. Interconnection agreements.**

On the other hand, we recognize the existence of interconnection contracts between PRTC and wireless companies, through which the parties incorporated agreements on billing and traffic routing. The RTB is precisely the result of having the parties agreed to the form in which the billing between companies for the traffic between the set service and the cellular would be, when the completion of said traffic is outside the local zone (or NXX) of the zone originating it, and where there is no interconnection point or MP. The parties agreed that said traffic would be treated as local and incorporated a clause setting forth the form of billing. Said interconnection contracts are in force. As a matter of fact, several of them have been renewed.

In the contracts of reference, there are clauses determining the routing. Centennial argues having set up



with PRTC facilities known as "meet points" (MP) where it receives the traffic originating from the central offices of PRTC for completion in its own network. In view of the existence of the referred MP, it is evident that the traffic object of this controversy, has been treated as local traffic, in delivering, at least in the case of Centennial, in the MP of the same central office in which it originates. It would be evident, then, that because the traffic is local by virtue of the routing agreed to between the parties, it does not allow for charge for intransland long distance. As a result, the elimination of the RTB does not imply that the call to a CMRs where there is MP can be treated as an intransland long distance

It arises from the afore that PRTC's proposal impacts the contracts between the companies, specifically the interconnection agreements in force. It is reasonable to conclude that the obligation agreed to regarding billing and routing, induced the companies to believe the relationship would continue. These agreements are required by the Telecommunications Act of 1996, and Act 213. The same require submission to this Board for the express approval by this Forum, that may approve or reject the same<sup>5</sup>. Without our

---

<sup>5</sup> Chapter 3, Article 5(e), Act 213.

approval the contract is not valid.

We are concerned about PRTC's proposal, because it affects directly the interconnection contracts in force, submitted to and approved by this Board. The proposed action may have the effect of hampering unilaterally these contracts, a position this Board cannot endorse. PRTC accepted voluntarily the routing of traffic through MP's and the mechanisms of billing of this traffic through RTB<sup>6</sup> that it now seeks to eliminate, despite the contractual obligations it has incurred.

In addition to the above, the federal regulations related to the LNP demand that if an NXX has been ported, a query be made, to determine towards which carrier the call should be destined. The FCC has determined that the responsibility of conducting this "query" falls mainly on the carrier before last, identified as the N-1. According to the existing scheme in the interconnection agreements between the companies, there are only two carriers: the originating and

---

<sup>6</sup> It is pertinent to point out that from the investigation conducted, it arises that in several states the RTB has been used as a billing mechanism through a tariff, different to the case of Puerto Rico, that, as we indicated, it has been made through a contract. This may be verified in the Affidavit of Michael O'Connor, submitted by PRTC, at paragraph 2. The tariff mechanism is substantially different from the interconnection agreements.

the ending, with PRTC being the originator<sup>7</sup>. Under that scheme, then, PRTC is the next to the last carrier, that is the N-1 and who should make the query.

PRTC's proposal to eliminate the RTB and deliver the traffic to the IXC's allows it to avoid that responsibility to act as N-1 and in turn responsibility to make the changes necessary in its switches. By incorporating the IXC's, it would then be these who should perform the query. We wonder if the proposal we evaluate may be a mechanism to avoid compliance with its contractual relations and thus evade its responsibility to act as N-1.

### **3. Hampering of the investment by companies.**

From another angle, it is unavoidable to recognize that the companies have made a significant investment, both the one having set up MP's, as well as those that have used alternate methods of traffic with PRTC, acquiring from the PRTC dedicated facilities. The proposed actions may have the effect, equally, of hampering the improvements to their network and the investment incurred by these companies.

### **4. Notification of the possible elimination of RTB to the parties affected.**

---

<sup>7</sup> For purposes of calls from wireline telephones of PRTC to wireless telephones.

Having recognized the impact that the elimination of the RTB will have on this market, we are, by force, lead to conclude that PRTC was not diligent in notifying the changes that it now proposes both to the companies and the consumers. However, from the documents submitted by PRTC in its Response of October 9, 2003, it arises that in those states in which Verizon has modified its tariff to remove the option of the RTB<sup>8</sup>, the process has been extensive and has entailed providing adequate notification both to the companies as well as to the clients sufficiently in advance.

It arises from the documents submitted that in one of the cases Verizon notified for the first time to the wireless companies, through a communication sent in September 27, 2001, the elimination of the RTB set for October 1, 2002, that is, practically one year in advance. Subsequently, it sent a follow-up letter dated July 9, 2002 on the same subject matter.

Additionally, another communication dated March 31, 2003, indicates to be a follow-up letter to those sent in September 2001, July 2002 and August 2002 on the elimination of the RTB, set for October 1, 2003. Here the situation is explained and it is indicated that this is a reminder to the companies,

---

<sup>8</sup> Florida, Massachusetts, Michigan, New Hampshire, New York, South Carolina and Vermont.

indicating that if they have not taken action, they should do it. We are not aware that this has been the case in Puerto Rico.

Also, PRTC's Response included what is identified as a "bill insert" to the clients in those jurisdictions in which Verizon renders services, notifying the change and indicating the same will be incorporated to the entire client-base. It also states that message started with the bills for December 2000, and would appear hereafter for a period of each alternate month, in the bills for February, April, June, August and October 2003.

It is evident from the above that in those jurisdictions in which Verizon acted with sufficient diligence and promptness to provide adequate notification, both to the affected companies, as well as to the clients to warn them of the impact of what the elimination of the RTB represents in those markets. If PRTC had known for a considerable amount of time of the implementation of the LNP and if it did so in other jurisdictions, how can it explain that in Puerto Rico the same diligence has not been used? This Board is concerned about the absence of information among consumers relative to the changes that will be implemented (for example, the way of dialing), and also about the economic impact the elimination of the RTB would represent.

5. The entire territory of Puerto Rico is not found in the definition made by the FCC of the 100 "Largest Metropolitan Statistical Areas" (LMSA).

Approximately two thirds of the Island of Puerto Rico do not fall under the category of being a LMSA. It is to said LMSA to whom the obligation imposed by the FCC to adopt the inter modal LNP in November 24, 2003 is applicable. However, PRTC has assumed the position of adopting the service for the entire Island, only through the elimination of the RTB, with the result of affecting the consumers, as well as the companies. Under the Federal Law, in those areas not classified as LMSAs, PRTC may implement the LNP in a term of six months after receiving a bona fide application, permitting the performance of the changes necessary in its systems to offer the service. Therefore, it is unexpected, PRTC's position in wanting to implement this process in all of Puerto Rico at this time, a position that we cannot endorse.

6. Impact on the reduction of local zones.

Finally, we refer to the information made public by PRTC of the elimination of 68 existing local zones next January, that will be reduced to ten, in a process to start next January, that is, a bit over a month from this date. Said

action will change significantly the scope of telecommunications service in Puerto Rico and will have an impact both on the companies providing the telecommunications service in Puerto Rico, as well as in the consumers.

The reduction of zones will require PRTC to make significant changes in many instances, particularly in the network, including the dialing pattern. As a result, many calls that are now, because there are 68 zones, long distance, will stop being long distance and will become local calls. It seems to us that in view of such a significant change in this industry, perhaps it is not the most prudent time to eliminate the RTB, that entails having the consumer paying for these calls as intraisland long distance, something that may vary after January 1, 2004.

Additionally, lastly, PRTC's argument to the effect that it cannot perform changes to the network to identify calls after implementing the LNP, due to problems in its switches and because it would be too costly, is defeated with the changes to the network that it will have to carry out starting over the next few weeks as a result of the reduction in zones.

6. The existence of a technical impairment has not been proven.

This Board understands that PRTC has not produced substantial evidence of a technical impairment forcing it to eliminate the RTB. In choosing to eliminate the RTB, PRTC alleges to be stopped from being the N-1 and conducting the query. However, under the current scheme with the companies, the same can be performed being effectively the first to the last carrier (N-1).

We are not persuaded the elimination of the RTB is appropriate at this time and under the circumstances evaluated. The proposed action clashes with the best interests of the Puerto Rican consumer, the stability of the telephone network and the telecommunications service in Puerto Rico.

According to the afore discussed, and the arguments of the parties, this Board adopts the following

**FINDINGS OF FACT:**

1. Eliminating the RTB is not an imperative nor a condition to the implementation of the intermodal LNP in Puerto Rico
2. The elimination of the RTB proposed by PRTC may have a negative impact in the network, affecting the telecommunications services offered in Puerto Rico.
3. There are interconnection agreements between PRTC



and CMRS, in force and approved by this Board, that may be affected by the proposal of PRTC and that are not allowed to be unilaterally amended.

- 4 Under the current contractual scheme between PRTC and the CMRS, there are only two carriers, being the first who should conduct the query.
- 5 PRTC was not diligent in notifying the companies and consumers of the elimination of the RTB and the impact of said action
6. With the reduction in the local zones proposed by PRTC, significant changes and investment in the network are required, so that the argument about the economic effect it represents for PRTC to perform the changes to maintain the RTB loses impact
7. Because the entire territory of the Island of Puerto Rico is not a LMSA, the implementation of the LNP in the entirety of the Island as of November 24, 2003 is not required.

PRTC has not established the existence of a technical impairment obligating it to implement the LNP under a single alternative

#### CONCLUSIONS OF LAW:

The provisions in Act 213 of 1996, empower this Board to

analyze and determine the needs and interests of the people of Puerto Rico concerning the development of the telecommunications industry.

This Board, as part of the faculties bestowed upon it by the legislator in its Habilitating Act, Act 213 of 1996, is empowered and obligated to guaranty the enjoyment offered without fear of unreasonable interruptions.<sup>9</sup> Additionally, the service of telecommunications is recognized as one pursuing a goal of high public interest<sup>10</sup> that this Board is called to protect.

Act 213 requires, likewise, that in the use of its faculties, this Board approve the interconnection contracts for their validity. The action proposed by PRTC may have the effect of affecting unilaterally the contracts adopted by the parties and approved by this Board, in contravention of Act 213. It is unquestionable that any amendment to these should be submitted and approved by this Board. This had not happened in this case, so that the effectiveness and validity of the contracts between the parties is recognized.

The Board has been commissioned to protect the public interest, as per express faculty of its Habilitating Act, so

---

<sup>9</sup> Chapter I, Article 2(r), Act 213.

<sup>10</sup> Chapter I, Article 2(a), Act 213.

that in the discharge of said responsibility, it cannot endorse the proposal by PRTC which may have a negative impact in the consumers.

All the actions, regulations and findings of the Board will be governed by the Federal Communications Act, the public interest and specially by the protection of the rights of consumers.<sup>11</sup> In conformance with that mandate and by the grounds discussed in this Resolution and Order, this Board RESOLVES AND ORDERS:

The PRTC is ORDERED to implement LNP so that it is consistent with the expressed in this Resolution and Order.

PRTC is hereby FOREWARNED that it cannot eliminate the RTB based on the grounds discussed herein.

A public hearing is set for Thursday, January 15, 2004, at 9:30 a.m., in which the probability of eliminating the RTB will be discussed in light of the implementation by PRTC of ten local zones in substitution for the 68 existing.

Notify this Resolution and Order to the parties in the instant case:

CENTENNIAL PR, ALEXANDER TORRES MARTINEZ, PO BOX 71514, SAN

---

<sup>11</sup> Chapter I, Article 7(f), Act 213

JUAN, PR 00936-8614

SPRINT, MIGUEL J RODRIGUEZ MARXUACH. PO BOX 16636, SAN JUAN,  
PR 00908-6636

PRTC, WALTER ARROYO CARRASQUILLO, PO BOX 360998, SAN JUAN, PR  
00936-0998

VERIZON WIRELESS, JUAN DELIZ ROMAN, 1515, ROOSEVELT AVENUE,  
11 FLOOR, SAN JUAN, PR 00920-2700

CINGULAR WIRELESS, FRANCISCO SILVA, PO BOX 192830, SAN JUAN,  
PR, 00919-2830

AT&T OF PR, COURTNEY WYNTER, PO BOX 10288, CAYEY, PR 00737-  
9600

AT&T WIRELESS, JEANNE HABIB, IBM BLDG. SUITE 2000, 654 MUÑOZ  
RIVERA AVENUE, SAN JUAN, PR 00918

TELEFONICA LARGA DISTANCIA, LEONOR RIVERA LEBRON, PO BOX  
70325, SAN JUAN, PR 00936-8325

PRIMUS TELECOMMUNICATIONS, MELISA NEAL, METRO OFFICE PARK #6,  
SUITE 202, GUAYNABO, PR 00968

MOVISTAR, LEONOR RIVERA LEBRON, METRO OFFICE PARK, BLDG. 17,  
2 STREET, SUITE 600, GUAYNABO, PR 00968

It was so agreed by the Board this November 20, 2003.

/s/signed: Illegible	Phoebe Forsythe Isales, President
/s/signed: Illegible	Vicente Aguirre Iturrino, Associate
/s/signed: Illegible	Jorge L. Bauermeister, Associate

CERTIFICATE

I CERTIFY this to be a true and correct copy of the Resolution and Order approved by the Board in November 20, 2003. I CERTIFY that on this November 20, 2003, I have forwarded a copy of this Resolution and Order to the parties indicated in the CERTIFICATE OF SERVICE and have proceeded to its filing in the record

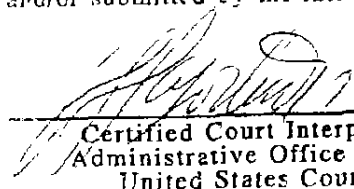
IN WITNESS THEREOF, I sign this in San Juan, Puerto Rico, this November 20, 2003.

/s/signed: Illegible

CICRAH J. MONTES GILORMINI

Clerk of the Board

**-CERTIFIED-**  
To be a correct translation made  
and/or submitted by the interested party

  
\_\_\_\_\_  
Certified Court Interpreter  
Administrative Office of the  
United States Courts